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Mohd Affandi bin Yusoff v Hong Leong Bank Bhd (previously known as Hong Leong Finance Bhd) & Anor

B

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-02(NCVC)(W)-527–03 OF 2017
DAVID WONG, ABANG ISKANDAR AND HASNAH HASHIM JJCA
27 FEBRUARY 2019

C

Land Law — Order for sale — Certificate of sale — Validity of certificate of sale — Form 16F altered — Validity of Form 16F — Whether there was a breach of condition of memorandum of sale — Whether transfer defeasible due to forged or void instrument of dealing

D

This was an appeal against the decision of the High Court in dismissing the appellant's claim against the respondents. The appellant had purchased a piece of industrial land ('the land') which was partly financed by the first respondent vide a loan agreement ('the loan') and the land was charged as a security for the
E loan. The appellant had defaulted in the repayment of the loan and the first respondent commenced a civil suit against the appellant for recovery of the sum owing wherein judgment in default was obtained. Foreclosure proceedings was then commenced and an order for sale was obtained. By a proclamation of sale the land was to be sold by public action which was fixed and the land was sold
F to the second respondent who was the highest bidder. The first respondent had also commenced bankruptcy proceedings against the appellant and the appellant was subsequently declared a bankrupt. The appellant was only discharged on 7 May 2015. The appellant filed this suit when he discovered that there was a breach of the conditions of sale and the illegal transfer of the
G land to the second respondent. The appellant sought the following reliefs: (a) an order to rescind the memorandum of sale dated 26 June 2006 and setting aside the proclamation for sale and the public auction dated 26 June 2006; (b) to set aside the order for sale dated 22 February 1999 and 30 March 2006; (c) forfeiture of the deposit sum and to be paid into account of the appellant
H less the charges and refund the balance purchase price to the second respondent; (d) to annul the certificate of sale (Form 16F) dated 15 November 2010; (e) cancellation of the registration of title in the name of the second respondent; (f) a declaration that the appellant was the registered and beneficial owner of the land; and (g) forfeiture of the deposit to be paid into the
I account of the appellant. The grounds of appeal were: (i) whether there was a breach of condition 8 of the memorandum of sale; and (ii) the validity of the certificate of sale.

Held, allowing the appeal in part:

(1) The second respondent had made full payment within the specified time and was the beneficial owner of the land, there was no breach of the condition 8 by the second respondent and the sale of land had been completed (see para 24).

(2) Though there was no evidence adduced by the appellant on who had altered the date on the Form 16F. The first and second respondent did not dispute that Form 16F was altered. Therefore the registration of land in the name of the second respondent was bad in law as the Form 16F with the unexplained alterations was presented to secure registration. It was therefore clear that there was merit in the appellant's complaint on the issue of the validity of Form 16. Thus, the transfer of the said land to the second respondent with a forged or void instrument of dealing was defeasibile under s 340(2)(b) of the National Land Code. However, since the second respondent was the successful bidder at the public auction and had made full payment within the specified time, the appellant's right in the land had been extinguished. The appellant was in fact and in law, a bare trustee (see paras 28 & 30).

[Bahasa Malaysia summary

Ini merupakan rayuan terhadap keputusan Mahkamah Tinggi dalam mengetepikan tuntutan perayu terhadap responden-responden. Perayu telah membeli satu tanah industri ('tanah tersebut') yang telah dibiayai sebahagiannya oleh responden pertama melalui satu perjanjian pinjaman ('pinjaman tersebut') dan tanah tersebut digadaikan sebagai cagaran kepada pembiayaan tersebut. Perayu telah mungkir untuk membayar pinjaman tersebut dan responden pertama telah memulakan satu saman sivil terhadap perayu untuk mendapatkan semula jumlah tersebut yang mana satu penghakiman ingkar telah diperoleh. Prosiding penutupan telah dimulakan dan satu perintah penjualan telah diperoleh. Melalui satu pengisytiharan penjualan hendaklah dijual melalui satu lelongan awam yang ditetapkan dan tanah tersebut telah dijual kepada responden kedua yang merupakan pembida tertinggi. Responden pertama juga telah memulakan prosiding pembankrapan terhadap perayu dan perayu telah kemudiannya diisytiharkan sebagai seorang muflis. Perayu yang dilepaskan pada 7 Mei 2015. Perayu memfailkan guaman ini apabila beliau mengetahui bahawa wujud pelanggaran terma dan syarat dan pemindahan tidak sah tanah tersebut kepada responden kedua. Perayu memohon untuk relif-relif berikut: (a) satu perintah untuk membatalkan memorandum penjualan bertarikh 26 Jun 2006 dan mengetepikan pengisytiharan penjualan dan lelongan awam bertarikh 26 Jun 2006; (b) untuk mengetepikan perintah penjualan bertarikh 22 Februari 1999 dan 30 Mac 2006; (c) perampasan jumlah deposit untuk dibayar kepada akaun

perayu kecuali daripada caj dan jumlah harga belian kepada responden kedua; (d) untuk membatalkan sijil penjualan (Borang 16F) bertarikh 15 November 2010; (e) pembatalan pendaftaran hakmilik dalam nama responden kedua; (f) satu pengisytiharan bahawa perayu merupakan memilik berdaftar dan benefisial tanah tersebut; dan (g) perampasan deposit dibayar ke dalam akaun perayu. Alasan rayuan adalah: (i) sama ada wujud pelanggaran syarat 8 dalam memorandum penjualan; dan (ii) kesahan sijil penjualan.

Diputuskan, membenarkan sebahagian daripada rayuan:

(1) Responden kedua telah membuat bayaran penuh dalam waktu yang diperincikan dan merupakan pemilik benefisial tanah tersebut, tidak wujud pelanggaran syarat 8 oleh responden kedua dan penjualan tanah tersebut telah dilengkapkan (lihat perenggan 24).

(2) Walaupun tiada keterangan yang dikemukakan oleh perayu berkenaan siapa yang telah mengubah tarikh pada Borang 16F. Responden pertama dan kedua tidak mencabar bahawa Borang 16F telah dipinda. Oleh itu, pendaftaran tanah dalam nama responden kedua adalah ssalah di sisi undang-undang kerana Borang 16F dengan pengubahan yang tidak dijelaskan dipersembahkan untuk mendapatkan pendaftaran. Ianya adalah jelas bahawa wujud merit dalam aduan pengadu atas isu kesahan Borang 16. Oleh itu, pemindahan tanah tersebut kepada responden kedua dengan instrumen urusan yang dipalsukan atau tidak sah boleh disangkal di bawah s 340(2)(b) Kanun Tanah Negara. Namun, memandangkan respon kedua merupakan pembida yang berjaya sewaktu lelongan awam dan telah membuat pembayaran penuh dalam tempoh yang diperincikan, hak perayu dalam tanah tersebut telah tamat. Perayu, dalam fakta dan undang-undang, hanya merupakan seorang pemegang amanah (lihat perenggan 28 & 30).]

Notes

For a case on order for sale in general, see 8(3) *Mallal's Digest* (5th Ed, 2017 Reissue) para 4345.

Cases referred to

Kamarulzaman bin Omar & Ors v Yakub bin Husin & Ors [2014] 2 MLJ 768; [2014] 1 CLJ 987, FC (refd)

Legislation referred to

National Land Code s 340(2)(b), Form 16F

Appeal from: Civil Suit No BA-22NCVC-188–03 of 2016 (High Court, Shah Alam)

S Shanmugan (R Rajasegran with him) (Sutha & Co) for the appellant.
Daphne Khoo Su Mei (Tan Mei Fang with her) (Rahmat, Lim & Partners) for the first respondent.
Yap Siew Yee (Tee Chin Hian with him) (Yap Siew Yee & Co) for the second respondent.

Hasnah Hashim JCA (delivering judgment of the court):

[1] The appeal before us was against the decision of the learned judicial commissioner in the Shah Alam High Court dismissing the appellant's claims against the first and second respondents. We had, after perusing the records of appeal and after considering the written and oral submissions of learned counsel for the appellant and the respondents, unanimously allowed the appeal in part with no order as to costs. The order of the High Court was accordingly varied. We further ordered that the deposit be refunded. Our reasons appear below.

[2] For the purpose of this judgment, the parties will be referred to as they were referred to in the High Court.

MATERIAL FACTS

[3] We summarised the material facts as follows. The plaintiff purchased a piece of industrial land held under title Geran No 40090, Lot 4314, Mukim Serendah Daerah Hulu Selangor ('the land'). The purchase of the land was partly financed by the first defendant for a sum of RM457,500 vide a loan agreement dated 4 September 1997 ('the loan'). The land was charged as security for the loan.

[4] The plaintiff defaulted in the repayment of the loan. The first defendant commenced a civil suit against the plaintiff for recovery of the sum owing (Shah Alam Civil Suit No MT 4–22–929 of 1998). Judgment in default was obtained on 5 November 1998 for the sum of RM479,010.98 together with interest.

[5] Foreclosure proceedings was then commenced and an order for sale dated 22 February 1999 was obtained. By a proclamation of sale the land was to be sold by public auction at a reserve price of RM445,500 subject to the conditions of sale. An auction date was fixed on 26 June 2006. The land was sold on 26 June 2006 to the second defendant who was the highest bidder.

[6] The terms of the conditions of sale stipulated that the balance purchase

price must be paid within 120 days of the sale, ie on or before 23 October 2006.

[7] The second defendant obtained a loan for a sum of RM330,000 from Hong Leong Islamic Bank Bhd. The balance 10% of purchase price, a sum of RM404,550 was paid by the second defendant through its solicitors vide a letter dated 19 October 2006 to the Shah Alam High Court and acknowledged receipt by the court on 20 October 2018:

(a) RM330,000 vide a Hong Leong Bank Bhd Bank Draft No 008425 dated 18 October 2006; and

(b) RM74,550 vide Bumiputra-Commerce Bank Bhd Bank Draft No 411094 dated 9 October 2006.

[8] The Shah Alam High Court issued receipts dated 26 June 2006 and 30 October 2006 for the following payments:

(a) the deposit sum of RM44,950; and

(b) the balance of RM404,450.

[9] The first defendant had also commenced bankruptcy proceedings against the plaintiff. An adjudicating order was granted on 25 March 2007 and the plaintiff was declared a bankrupt. The plaintiff was discharged on 7 May 2015.

[10] Upon the second defendant complying with the conditions of sale, the deputy registrar of the High Court endorsed and issued a certificate of sale (Form 16F) on 9 April 2007. A *penyata balif* dated 16 April 2007 was then issued by the court. A sum of RM418,268.20 was paid to the first defendant's solicitors. Subsequently the second defendant's solicitors presented the Form 16F dated 15 November 2010 to the land office on 27 January 2011 for registration and transfer of the land from the plaintiff to the second defendant.

[11] The plaintiff filed this suit when he discovered that there was a breach of the conditions of sale and the illegal transfer of the land to the second defendant. The second defendant paid the balance sum on 30 October 2006 instead of 23 October 2006 and was therefore in breach of the terms of conditions of sale.

[12] The plaintiff filed a suit against both the defendants and sought the following reliefs:

(a) an order to rescind the memorandum of sale dated 26 June 2006 and

setting aside the proclamation of sale and the public auction dated 26 June 2006;

(b) to set aside the order for sale dated 22 February 1999 and 30 March 2006;

(c) forfeiture of the deposit sum of RM44,950 and to be paid into account of the plaintiff less the charges and refund the balance purchase price of RM416,268.20 to the second defendant;

(d) to annul the certificate of sale (Form 16F) dated 15 November 2010;

(e) cancellation of the registration of title in the name of the second defendant;

(f) a declaration that the plaintiff is the registered and beneficial owner of the land; and

(g) forfeiture of the deposit to be paid into the account of the plaintiff.

[13] After a full trial the learned judicial commissioner concluded that based on the evidence before her the plaintiff failed to prove his case on a balance of probabilities and dismissed the plaintiff's claim.

FINDINGS OF THE HIGH COURT

[14] The learned judicial commissioner dismissed the plaintiff' application on the following grounds:

(a) the payment of the balance purchase price was completed when the second defendant presented the banker's cheques on 20 October 2006 and not the date of the issuance of the receipt by the court;

(b) the allegation of fraud or forgery had nothing to do with the interest of the plaintiff because at the material time when Form 16F was issued the second defendant is the beneficial owner of the land;

(c) the amendment and/or alteration of the date in the Form 16F did not affect the obligation and/or liability of the second defendant in the proclamation for sale. Form 16F is merely an instrument of dealing to transfer the said land from the plaintiff to the second defendant; and

(d) the presentation of the amended Form 16F was valid.

GROUNDS OF APPEAL

[15] In the memorandum of appeal, the plaintiff raised, inter alia, the following two main grounds in impugning the learned judicial commissioner's

decision:

(a) whether there was a breach of condition 8 of the memorandum of sale; and

(b) the validity of the certificate of sale (Form 16F).

SUBMISSION OF PARTIES

Whether there was a breach of condition 8 of the memorandum of sale

[16] Learned counsel for the plaintiff submitted that the court receipt dated 30 October 2006 is proof that the second defendant had paid the balance sum of RM404,550 on 30 October 2006. The *penyata balif* dated 16 April 2007 stated that the payment of the balance purchase price was paid on 30 October 2006. The payment was made seven days after the expiry of the 120 days as stipulated in cl 8 of the memorandum of sale rendering the said sale void.

[17] In reply, learned counsel for the first defendant argued that the payment was made on 20 October 2006 and that there was a delay in the issuance of the receipt by the Shah Alam High Court. Based on the oral and documentary evidence there was no delay in the payment of the balance purchase price. Therefore, the second defendant had complied with condition 8 and paid within the required 120 days.

[18] Learned counsel for the second defendant had also submitted that payment was made within 120 days in compliance with the terms of the condition of sale. This was confirmed by PW1, the deputy registrar at the time of the transaction.

The validity of the certificate of sale (Form 16F)

[19] It is the plaintiff's case that Form 16F that was presented was tampered as follows:

(a) the original date of 9 April 2007 was altered to 15 November 2010; and

(b) the date of acknowledgement of receipt by the court was crossed out.

[20] Learned counsel for the plaintiff argued that the presentation of the altered Form 16F was invalid as it was amended without any authorisation. The second defendant's solicitors had committed forgery by changing the date and concealing the original date on the said Form 16F without authorisation with the intention to evade stamp duty penalty. The

second defendant had used a forged instrument of dealing for presentation to the land office thus, the seocnd defendant had procured the registration of title by presenting a forged instrument of dealing. The registration of title in the name of the second defendant is therefore defeasible under s 340(2)(b) of the National Land Code (see *Kamarulzaman bin Omar & Ors v Yakub bin Husin & Ors* [2014] 2 MLJ 768).

[21] In reply, learned counsel for the first defendant submitted that the plaintiff never pleaded the intent of the forged Form 16F was to evade stamp duty. The plaintiff's witness had no personal knowledge of the Form 16F and even if there was fraud the plaintiff is not affected by the alleged fraud. Furthermore, the plaintiff failed to adduce evidence that the second defendant had fraudulently instructed its previous solicitors to tamper with the Form 16F.

[22] It was further submitted by the learned counsel for the second defendant that the existence of fraud would not affect the plaintiff as at the material time of the issuance of Form 16F the second defendant was the beneficial owner having paid the balance of the purchase price within the specified time. The alteration of the date on Form 16F is immaterial and does not affect the validity of Form 16F. The plaintiff no longer had any right or interest over the land. The second defendant would be seriously prejudiced as the transfer had been completed in January 2011 and has constructed a factory/warehouse on the land. Furthermore, the land has been charged to Public Bank Bhd.

[23] Learned counsel for the second defendant submitted that the plaintiff had benefitted from the forced sale as the proceeds was credited into the plaintiff's outstanding account to offset his debt with the first defendant.

DECISION

[24] As alluded to earlier the issues before this court were whether there was a breach of condition 8 of the memorandum of sale and the validity of the certificate of sale (Form 16F).

[25] The second defendant was the successful bidder at the public auction. On the facts and evidence the second defendant had made full payment within the specified time and is the beneficial owner of the land. We agree with the learned judicial commissioner that there was no breach of the condition 8 by the second defendant and that the sale of the land had been completed. There is no reason, therefore, to disturb the finding of the learned judicial commissioner that the second defendant had paid the balance purchase price

within 120 days.

[26] In addressing the issue with regards to the validity of Form 16F, the learned judicial commissioner had found, based on the evidence before her that the forged Form 16F does not render it as a void instrument and affect the second defendant's interest as the beneficial owner of the land:

> [38] The allegation of fraud or forgery has nothing to do with the interest of the plaintiff because at the material time of the issuance of Form 16F, the beneficial owner of the said property was already the second defendant. Even if there is fraud or forgery, it would have no impact on the plaintiff as he was no longer the beneficial owner of the said property. In addition, the plaintiff also had failed to prove who did make the amendment or forged P11. There were no evidences (sic) adduced by the plaintiff to support his allegation that it was the second defendant's solicitor who did alter the date on P11. At the same time from D12, PW1 was unable to verify as who had make the said amendment since on that material date he was no longer the deputy registrar in the High Court Shah Alam. Taking into account of these evidences, I am of the view that the court should not be left to guess who actually had made the alteration. It could also be done by the any court officer who had the authority or approval to do so. In the absence of other evidence, I find that the Form 16F is a valid instrument properly issued in accordance with s 259(3) of the NLC 1965.
>
> [39] Furthermore, I am also of the view that the amendment and/or alteration on the date of the Form 16F exh P11 does not in any event change the terms and conditions or affect the obligation and/or liability of the second defendant in the proclamation of sale and/or contract of sale nor in the Form 16F itself. The Form 16F is merely an instrument of dealing to transfer the said property from the plaintiff to the second defendant after the second defendant had fulfilled its obligation under the said proclamation of sale and/or contract of sale under s 267 of the NLC 1965. Even if there is an alteration as to the date on the Form16F, it does not render the Form 16F as a void and insufficient instrument. I am satisfied that the alteration as to the date will not invalidate the Form 16F. Above all it does not change the fact that the second defendant is the bona fide purchaser for valuable consideration, who had fulfilled all its obligations under the said proclamation of sale and/or contract of sale within the stipulated period.

[27] Learned counsel for the plaintiff submitted that the second defendant's title is defeasible because the registration was obtained by means of an insufficient or void instrument. There were alterations made to the endorsed the Form 16F:

KANUN TANAH NEGARA
BORANG 16F
PERINTAH JUALAN OLEH MAHKAMAH

(Stem hendaklah diletakkan atau pembayaran Cukai Diperakui-dalam ruang ini)
UNTUK KEGUNAAN PEJABAT PENDAFTARAN

Ingatan pendaftaran dibuat dalam Suratan/Hakmilik dalam daftar yang dijadualkan di bawah ini mulai dari pukul 10.15 pada 21 haribulan Jun 20 11

Pendaftar/Pentadbir Negeri /Daerah

Fail mengenai VMCD
Jilid
Folio
Perserahan No.

SAYA, ADLI BIN ABD. GHALIB K/P No: 610628-08-5491
Timbalan Pendaftar, Mahkamah Tinggi Malaya di Shah Alam pada menjalankan kuasa-kuasa yang diberi oleh Seksyen 259, Kanun Tanah Negara, dengan ini memperakui bahawa tanah yang tersebut dalam jadual dibawah ini telah dijual dengan harga sebanyak Ringgit Malaysia: Empat Ratus Empat Puluh Sembilan Ribu Dan Lima Ratus (RM449,500-00) sahaja (penerimaan yang mana dengan ini diakui) kepada LEFORM SDN BHD. (330776-K), sebuah syarikat yang ditubuhkan di Malaysia di bawah Akta Syarikat 1965 dan mempunyai pejabat perniagaan di Lot 9111, Mukim Kapar, 5 ½ Miles, Jalan Kapar, 42100 Klang, Selangor Darul Ehsan menurut Perintah Mahkamah di bawah Seksyen 256 dalam Kanun itu, yang telah atas permohonan gadaian di bawah Gadaian Berdaftar No. 46916/97 Jilid 87 Folio 161

- Suratan Hakmilik yang dikeluarkan bagi tanah itu:-
- (a) adalah dikembarkan bersama ini ;
- (b) tidak pernah diserahkan kepada Mahkamah pada bila-bila masa pun, dan tidaklah dikembarkan.

Bertarikh pada 15 haribulan November 2010

Pegawai Mahkamah

DALAM YANG DIPERAKUI SAH
04681
15/11/16

[28] PW1 could not verify who had made the alterations since on the stipulated date he was no longer the deputy registrar in the Shah Alam High Court. The letter from the registrar of the High Court dated 5 February 2016 (referred to by the judicial commissioner in para 37 of her grounds of judgment) confirmed that PW1 was the deputy registrar from June 2006–October 2007 and that the Form 16F was altered. However, he could not verify nor explain who had altered the Form 16F:

PENDAFTAR
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Ruj. Tuan SC/MISC/0497/15
Ruj. Kami PMT/UU/7JLD.6
Tarikh 5 Februari 2016

Tetuan Sutha & Co
Peguambela & Peguamcara
24B, Jalan Dato Hamzah
41000 Klang
SELANGOR DARUL EHSAN

Tuan,

MAHKAMAH TINGGI SHAH ALAM
SAMAN PEMULA NO MT1-24-660-1998
PERMOHONAN UNTUK PELAKSANAAN NO: 38-353-2005
HONG LEONG FINANCE BERHAD ... PLAINTIF
MOHD AFFANDI BIN YUSOF ... DEFENDAN

Dengan hormatnya saya diarah untuk merujuk kepada surat tuan bertarikh 1 Disember 2015 dan 1 Februari 2016 berkenaan perkara di atas.

2. Dimaklumkan bahawa pejabat ini telah menjalankan siasatan dan juga menyemak rekod-rekod prosiding kes berkenaan. Untuk makluman tuan, semakan pejabat ini mendapati tandatangan pada Kontrak Jualan, Penyata Bailif dan Borang 16F disahkan oleh Tuan Adli bin Abd. Ghalib sebagai tandatangan beliau. Tuan Adli bin Abd. Ghalib juga telah mengesahkan bahawa beliau telah berkhidmat di Mahkamah Tinggi Shah Alam sebagai Timbalan Pendaftar sejak bulan Jun 2006 hingga bulan Oktober 2007.

3. Walau bagaimanapun, setelah meneliti dokumen-dokumen yang dikemukakan oleh tuan, pejabat ini mendapati terdapat pindaan pada Borang 16F iaitu di bahagian 'tarikh' dan 'tarikh terima' Mahkamah. Setelah dirujuk kepada Tuan Adli bin Abd. Ghalib, beliau mengesahkan bahawa terdapat pindaan pada tarikh tersebut tetapi tidak dapat dipastikan siapakah yang membuat pindaan-pindaan tersebut.

4. Pejabat ini berharap penjelasan di atas dapat membantu tuan untuk mengambil langkah-langkah yang sewajarnya bagi perkara tersebut di atas.

[29] We accept that there was no evidence adduced by the plaintiff on who had altered the date on the Form 16F. The first and second defendants themselves did not dispute that Form 16F was altered. In this regard we cannot ignore that the said Form 16F was indeed tampered and the registration of the land in the name of the second defendant is bad in law as the Form 16F with the unexplained alterations was presented to secure registration.

[30] In the Federal Court case of *Kamarulzaman bin Omar & Ors v Yakub bin Husin & Ors* [2014] 2 MLJ 768; [2014] 1 CLJ 987 His Lordship Jeffrey Tan FCJ gave the following advice:

> [41] Before we adjourn, we would summarise the foregoing and pass on the following, as a guide to trial courts. Whenever a registered title or interest is sought to be set aside under , first ascertain whether the title or interest under challenge is registered in the name of an immediate purchaser or a subsequent purchaser. If the title or interest is registered in the name of an immediate purchaser, the bona fides of the immediate purchaser will not offer a shield of indefeasibility. The title or interest of an immediate purchaser is still liable to be set aside if any of the vitiating

elements as set out in s 340(2) has been made out ...

[31] It was therefore clear to our mind that there is merit in the plaintiff's complaint with regard to the learned trial judge's finding on the issue of the validity of Form 16. Thus, in our judgment the transfer of the said land to the second defendant with a forged and/or void instrument of dealing is defeasible under s 340(2)(b) of the NLC. However, it must be emphasised that since the second defendant was the successful bidder at the public auction and had made full payment within the specified time the plaintiff's right in the land had been extinguished. The plaintiff is in fact and in law, a bare trustee.

CONCLUSION

[32] After perusing the records of appeal and after considering the submissions from all parties, we had allowed the appeal in part. The order of the learned judicial commissioner is hereby varied accordingly to reflect the decision of this court, in particular, that the transfer of the land to the second defendant is set aside. We ordered no costs and that the deposit be refunded to the appellant.

Appeal allowed in part.

Reported by Izzat Fauzan